



judgment on January 28, 2008; and Defendant Mecca having failed to respond to the instant Motion and the time for such response having elapsed; and

it appearing that Plaintiff seeks a judgement in accordance with 29 U.S.C. § 1132(g)(2);<sup>1</sup> and

it appearing that Plaintiff has estimated the amount of unpaid contributions due to be \$11,000, but that Plaintiff has not submitted any evidence to support this claim;<sup>2</sup> and

it appearing that Plaintiff seeks liquidated damages of 20% of the unpaid contributions, but that Plaintiff has not submitted a copy of the relevant plan establishing liquidated damages in that amount as required by the statute. See 29 U.S.C. § 1145(g)(2)(C)(ii) (“the court shall award

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<sup>1</sup> Section 1132(g)(2) reads in relevant part:

In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce [29 U.S.C. § 1145] of this title in which a judgment in favor of the plan is awarded, the court shall award the plan—

- (A) the unpaid contributions,
- (B) interest on the unpaid contributions,
- (C) an amount equal to the greater of—
  - (i) interest on the unpaid contributions, or
  - (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
- (D) reasonable attorney’s fees and costs of the action, to be paid by the defendant, and
- (E) such other legal or equitable relief as the court deems appropriate.

29 U.S.C. § 1132(g)(2).

<sup>2</sup> Federal Rule of Civil Procedure 55(b)(2) provides that

[i]f, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence . . . the court may . . . order such references as it deems necessary and proper . . . .

Fed. R. Civ. P. 55(b)(2).

the plan . . . liquidated damages provided for under the plan in an amount not in excess of 20 percent” (emphasis added)); and

it appearing that Plaintiff’s interest calculation is based on the unsupported requests listed above.

**ACCORDINGLY IT IS** on this 4th day of March, 2008

**ORDERED** that Plaintiff’s Motion for Default Judgment (DKT#8) is **GRANTED**; and it is further

**ORDERED** that Plaintiff shall have judgment in the amount of \$1,629.95 for attorney’s fees and other fees, as supported by Plaintiff’s submission to the Court; and it is further

**ORDERED** that no later than **March 24, 2008** Plaintiff shall submit to this Court proof sufficient to support its request for an “estimated net balance of principal contributions” in the amount of \$11,000 and its request for liquidated damages of 20%; and it is further

**ORDERED** that, in the proof to be submitted to this Court no later than March 24, 2008, Plaintiff shall also include a total requested judgment that includes the amount granted by this Order, the amounts to be proven in accordance with this Order, plus interest; and it is further

**ORDERED** that the Clerk of Court shall close this case.

/s/ Faith S. Hochberg

**Hon. Faith S. Hochberg, U.S.D.J.**